

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

----- :X

BRB INTERNACIONAL S.A. and :
APOLO FILMS SL, :
Plaintiffs, : Civil Case No. 17 civ. 2065 (ALC) (KHP)
-against- :
THE WEINSTEIN COMPANY LLC, : (Jury Trial Demanded)
Defendant. :

----- :X

ANSWER AND AFFIRMATIVE DEFENSES

For its answer Defendant admits, denies and alleges the following:

1. Answering paragraph 1, Defendant admits that it entered into an agreement with Plaintiffs, denies that Plaintiffs' allegations accurately or completely state or summarize that agreement, alleges that the agreement provided that timely delivery was "of the essence," denies that Plaintiffs completed delivery on time or at all, and denies that Defendant approved or accepted delivery. Except as so admitted and alleged, Defendant denies, generally and specifically, each and every allegation of paragraph 1.
2. Defendant denies, generally and specifically, each and every allegation of paragraph 2.
3. Defendant denies the allegations of paragraphs 3,4 and 6 for lack of information and belief.

4. Defendant denies that paragraphs 9 and 10 fully or accurately state the terms of the alleged agreement and denies that Defendant approved the development budget.

5. Defendant admits and alleges that the agreement requires the parties to negotiate and agree upon which terms shall or shall not be disclosed and precludes their disclosure of all terms the parties do not agree to disclose as a result of such future negotiations. Except as so admitted and alleged, Defendant denies, generally and specifically, each and every allegation of paragraphs 11, 12 and 13.

6. Answering paragraph 14, Defendant denies that it failed or refused to make any payment required by the alleged agreement and alleges that no such payment was or is due or required.

7. Answering paragraphs 15, 20, 17 and 32, Defendant repeats and realleges its answers to the paragraphs incorporated by reference.

8. Defendant denies, generally and specifically, each and every allegation of paragraphs 16, 17, 18, 19, 21, 22, 23, 24, 26, 28, 29, 30, 31, 33, 34, 35 and 36 and alleges that it has not proximately caused Plaintiffs any damages in any sum whatsoever.

9. Answering paragraph 25, Defendant admits that it has made no payment to Plaintiffs and alleges that it has no obligation to make any such payment.

AFFIRMATIVE DEFENSES

1. Defendant's performance of the alleged agreement is excused by Plaintiffs' material breach of the agreement and by Plaintiffs' repudiation of the agreement and of Defendant's rights thereunder.

2. Plaintiffs have failed to satisfy express conditions to Defendant's performance of the alleged agreement.

3. Plaintiffs have assigned their rights to a third party in violation of the alleged agreement and no longer hold the rights they seek to enforce in this action.

4. Plaintiffs' assignee has claimed that it, rather than Plaintiffs, holds the rights Plaintiffs seek to enforce in this action and is an indispensable party that Plaintiffs have failed to join in this action.

5. Paragraph 14 of the alleged agreement is unenforceable in that it leaves to the parties' future negotiation and agreement the issue of which terms can or cannot be disclosed.

6. To induce Defendant to enter into the agreement, Plaintiffs made false and fraudulent misrepresentations on which Defendant reasonably relied by entering into the agreement, including the false representation that iTunes and Amazon had already purchased and approved Plaintiffs' TV programming and that Plaintiffs would and did spend at least \$7 million on development of its newly produced programming. Plaintiffs also failed to disclose facts essential to prevent their affirmative statements from being materially misleading.

WHEREFORE, Plaintiffs are entitled to take nothing by their Complaint, and Defendant is entitled to its costs of defending this action.

JURY DEMAND

Defendant hereby demands a jury trial of all issues so triable.

Dated: May 17, 2017
Armonk, N.Y.

David Boies
Motty Shulman
BOIES SCHILLER FLEXNER LLP
333 Main Street
Armonk, NY 10977
T: 914-749-8200
mshulman@bsflp.com

Bertram Fields
Pierce O'Donnell
GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP
1900 Avenue of the Stars, 21st Floor
Los Angeles, CA 90067
T: 310-553-3610

By: s/ Motty Shulman

Attorneys for Defendant
THE WEINSTEIN COMPANY LLC